

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILSON SPORTING GOODS CO.,
a Delaware corporation,

Plaintiff,

vs.

NICKLAUS GOLF EQUIPMENT COMPANY,
L.C., a Florida Limited Liability Corporation,
GOLDEN BEAR INTERNATIONAL, INC., a
Florida Corporation, and JACK NICKLAUS,
an individual,

Defendants.

JUDGE GRADY

Civil Action No.

DOCKETED

MAGISTRATE JUDGE NOLAN

MAR 03 2003

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Wilson Sporting Goods Co. ("Wilson"), for its Complaint for Declaratory Judgment against Defendants Nicklaus Golf Equipment Company, L.C., a Florida Limited Liability Corporation, Golden Bear International, Inc., a Florida Corporation, and Jack Nicklaus, an individual (collectively, the "Nicklaus Defendants"), states as follows:

Nature of this Action

1. This is a declaratory judgment action brought pursuant to 28 U.S.C. § 2201. Wilson seeks a declaration that: (1) its Wilson Jack golf balls do not infringe any federal or common law trademark claimed by the Nicklaus Defendants; (2) the Nicklaus Defendants' federal and common law trademarks do not apply to golf balls bearing only the name Jack; (3) any federal or common law trademark for Jack on golf balls is invalid; and (4) Wilson does not violate any of Defendant Jack Nicklaus' rights of publicity under the Illinois Right of Publicity Act, or other similar state laws.

The Parties

2. Wilson is a Delaware corporation with its principal place of business at 8700 West Bryn Mawr, Chicago, Illinois.

3. Defendant Nicklaus Golf Equipment Company, L.C., is a Florida Limited Liability Company with its principal place of business at 7830 Byron Drive, Suite 7, West Palm Beach, Florida.

4. Defendant Golden Bear International, Inc. is a Florida Corporation with its principal place of business at 11780 U.S. Highway 1, Suite 400, North Palm Beach, Florida.

5. On information and belief, Jack Nicklaus is a resident of Florida and has his principal place of business at 11780 U.S. Highway 1, Suite 400, North Palm Beach, Florida.

Jurisdiction and Venue

6. This is an action for declaratory relief under 28 U.S.C. § 2201 seeking a declaration with respect to allegations of trademark infringement under Federal Law that have been asserted against Wilson by the Nicklaus Defendants.

7. This Court has jurisdiction pursuant to 28 U.S.C. 1338(a). This Court also has diversity jurisdiction under 28 U.S.C. § 1332(a) in that the action is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. Personal jurisdiction over the Nicklaus Defendants is proper pursuant to the Illinois Long Arm Statute, 735 ILCS 5/2-209, as they transact business within the state of Illinois.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Action for Declaratory Judgment

10. In 2002, Wilson introduced a golf ball bearing the Wilson's Box W trademark logo and the word Jack (the "Wilson Jack"). The Wilson Jack is marketed as a game improvement product providing longer distance features.

11. The Wilson Jack, itself, contains no reference to Jack Nicklaus or any of the Nicklaus Defendants. Moreover, none of Wilson's marketing, packaging or advertisement for the Wilson Jack contains any reference to Jack Nicklaus or the Nicklaus Defendants, and contains no likeness of Jack Nicklaus.

12. Wilson markets the Wilson Jack Golf Ball using the phrase "If you think there's a longer ball, you don't know Jack." This marketing phrase contains no reference to the Nicklaus Defendants and no likeness of Jack Nicklaus.

13. The Nicklaus Defendants have threatened litigation against Wilson for trademark infringement, deceptive trade practices, unfair competition and violation of Jack Nicklaus' publicity rights. There is an actual controversy between the parties for using the term Jack and the phrase "If you think there's a longer ball, you don't know Jack."

14. By threatening litigation against Wilson, the Nicklaus Defendants are seeking broad trademark protection and publicity rights for the name Jack regarding the sale of golf balls that have no reference to Jack Nicklaus or any other indicia of the Nicklaus Defendants. The Nicklaus Defendants are entitled to no such protection under applicable state or federal law.

15. The Nicklaus Defendants have no intellectual property rights or any other rights in the term Jack.

16. The Nicklaus Defendants' alleged trademark rights and publicity rights in the term Jack are void and invalid.

17. Wilson has not and does not infringe any rights of the Nicklaus Defendants.

18. Wilson fears that the Nicklaus Defendants will wrongfully attempt to stop the sale and marketing of the Wilson Jack, and Wilson seeks a declaration of its rights.

19. Pursuant to Federal Rule of Civil Procedure 38, Wilson demand trial by jury.

WHEREFORE, Wilson Sporting Goods Co., respectfully requests that this Court enter judgment:

- a. declaring that the Wilson Jack does not infringe any federal or common law trademark claimed by the Nicklaus Defendants;
- b. declaring that Wilson's sales, marketing and distribution of the Wilson Jack does not constitute deceptive trade practice or unfair competition under applicable law;
- c. declaring that the Nicklaus Defendants' federal and common law trademarks do not apply to golf balls bearing only the name Jack;
- d. declaring that any federal or common law trademark for the term Jack on golf balls is void and invalid;
- e. declaring that Wilson does not violate any of Defendant Jack Nicklaus' rights of publicity under the Illinois Right of Publicity Act, or other similar state laws; and
- f. for such other and further relief as the Court deems just and equitable under the circumstances.

Respectfully submitted,

WILSON SPORTING GOODS CO.

By: _____

One of Its Attorneys

Michael R. Levinson
Louis S. Chronowski
SEYFARTH SHAW
55 East Monroe Street, Suite 4200
Chicago, Illinois, 60603-5803
(312) 346-8000

The JS-44 civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

WILSON SPORTING GOODS CO.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michael R. Levinson, Louis S. Chronowski
SEYFARTH SHAW
55 E. Monroe St., Suite 4200
Chicago, IL 60603
312/346-8000

DEFENDANTS

NICKLAUS GOLF EQUIPMENT COMPANY, L.L.C.,
GOLDEN BEAR INTERNATIONAL INC., and
JACK NICKLAUS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Palm Beach, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

DOCKETED
MAR 03 2003

JUDGE GRADY

03C 1520
MAGISTRATE JUDGE NOLAN

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

This is a cause of action for declaratory relief pursuant to 28 U.S.C. Section 2201

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395b) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DRWC (405(g)) <input type="checkbox"/> 863 DRWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 28 USC 7608	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

Transferred from
5 another district (specify)

☐ 6 Multidistrict Litigation

☐ 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

Declaratory judgment

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

VIII. REMARKS

In response to ☐ is not a refiling of a previously dismissed action
General Rule 2.21D(2) this case ☐ is a refiling of case number _____ of Judge _____

DATE 2/28/03

SIGNATURE OF ATTORNEY OF RECORD

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

WILSON SPORTING GOODS CO.

v.

NICKLAUS GOLF EQUIPMENT COMPANY, L.C.,
GOLDEN BEAR INTERNATIONAL INC., and
JACK NICKLAUS

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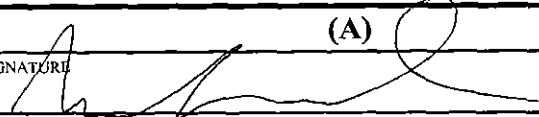
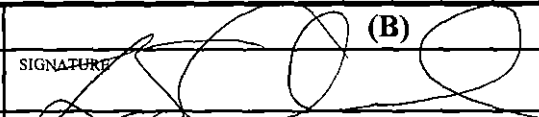
Case Number:

JUDGE GRADY**030****1520**

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

MAGISTRATE JUDGE NOLAN

WILSON SPORTING GOODS CO.

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME Michael R. Levinson		NAME Louis S. Chronowski	
FIRM SEYFARTH SHAW		FIRM SEYFARTH SHAW	
STREET ADDRESS 55 E. Monroe St., Suite 4200		STREET ADDRESS 55 E. Monroe St., Suite 4200	
CITY/STATE/ZIP Chicago, IL 60603		CITY/STATE/ZIP Chicago, IL 60603	
TELEPHONE NUMBER 312/346-8000	FAX NUMBER 312/269-8869	TELEPHONE NUMBER 312/346-8000	FAX NUMBER 312/269-8869
E-MAIL ADDRESS mlevinson@seyfarth.com		E-MAIL ADDRESS lchronowski@seyfarth.com	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3124570		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6269538	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

U.S. DISTRICT COURT
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